

U.S. DEPARTMENT OF THE INTERIOR

FOURTH INTERIM PARTIAL CLAIM FOR EARLY RESTORATION PLANNING COSTS
20 APRIL 2010 *DEEPWATER HORIZON* (MC 252) INCIDENT

TIME PERIOD: JANUARY – DECEMBER 2015



Submitted By:

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EXECUTIVE SUMMARY

On April 20, 2010, an explosion and fire on the *Deepwater Horizon* mobile offshore drilling unit resulted in 11 worker fatalities and discharges of oil and other substances from the rig and seabed wellhead into the Gulf of Mexico. Pursuant to section 1006 of the Oil Pollution Act (“OPA”), 33 U.S.C. §§ 2701 *et seq.*, and Executive Order 13626, federal, state, and federally recognized tribes are Trustees for natural resources and are authorized to act on behalf of the public to: (1) assess natural resource injuries resulting from a discharge of oil or the substantial threat of a discharge and response activities; and (2) develop and implement a plan(s) for restoration of such injured resources.

This document identifies early restoration planning procedures, which the U.S. Department of the Interior (“Department” or “DOP”) will be implementing in 2015. This document is a supplement to the Department’s Interim, Partial Claim dated July 1, 2011; the Second Interim Partial Claim, dated October 4, 2012; and the Third Interim Partial Claim, dated October 8, 2013 and October 3, 2014, which identified Assessment and restoration planning procedures that may have been performed in 2011, 2012, 2013, and 2014. These Early Restoration planning activities identified herein reflect consideration of the factors identified in 15 C.F.R. § 990.53 (developing restoration alternatives), § 990.54 (evaluation of alternatives), and § 990.55 (developing restoration plans). The Department will also be further developing and maintaining a document management system to support the Trustees’ efforts to develop an Administrative Record, and will be evaluating early restoration planning records for inclusion into the Administrative Record(s) (§ 990.61). Scientific information to support injury determination and quantification, although incomplete, is sufficient for the Trustees to proceed with early restoration planning. The Department’s early restoration planning activities in this Claim are a subset of the early restoration planning activities conducted by all Trustees. The Department expressly reserves its ability to supplement the early restoration planning procedures identified herein.

In April 2011, the Trustees entered into an agreement under which BP agreed to provide up to \$1 billion toward Early Restoration projects to address injuries to natural resources caused by the Spill, prior to the complete injury assessment. This Early Restoration agreement, entitled “Framework for Early Restoration Addressing Injuries Resulting from the Deepwater Horizon Oil Spill” (Framework Agreement), is intended to facilitate and expedite restoration in advance of the completion of the NRDA process. The Trustees have pursued and will continue to pursue Early Restoration project development activities for the remaining Framework Agreement funds. As with previous Early Restoration phases, projects in future phases are expected to require the same extensive level of planning, evaluation,

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preparation, environmental compliance analysis, and public review. These projects also require the appropriate level of OPA and National Environmental Policy Act (NEPA) documentation and must meet multiple environmental and regulatory compliance requirements. As such, this Claim identifies DOI's pre-stipulation Early Restoration planning costs for developing projects with the remaining Early Restoration Framework Agreement funds that are unique from activities already paid for by BP or the U.S. Coast Guard. Contractor support and Department staff costs are required to conduct pre-stipulation Early Restoration planning which includes offset development, and regulatory and environmental compliance costs as discussed below. The Department has determined that it will need \$5,603,111 to complete the early restoration activities described in this claim.

Exhibit 1 provides summary cost information for estimated contractor and agency costs for the Early Restoration planning procedures included in this Claim, which total 5,603,111. As noted in Exhibits 1, the Department has included a request for contingency funds for these activities. Contingency funds are intended to cover the risk that actual costs are higher than expected, and will only be made available upon documentation of higher than expected costs.

This Fourth Claim is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Exhibit 1 – Contract and Agency Costs for Early Restoration Planning Activities, with Contingency Amounts

	Restoration Planning Cost	15% of Restoration Planning Cost (Contingency)	Total Restoration Planning Cost
Contract Costs	\$1,157,000	\$173,550	\$1,330,550
DOI Personnel Costs	\$3,715,270	\$557,291	\$4,272,561
Grand Total	\$4,782,270	\$730,841	\$5,603,111

1. ADMINISTRATIVE INFORMATION

1.1. Claimant Eligibility and Coordination with Co-Trustees

The following governmental entities are designated natural resource Trustees under OPA and Executive Order 13626 and are currently acting as Trustees for this Incident¹:

- the U.S. Department of the Interior, as represented by the National Park Service (NPS), the Fish and Wildlife Service (FWS), and Bureau of Land Management (BLM);
- the National Oceanic and Atmospheric Administration (NOAA), on behalf of the United States Department of Commerce;
- the Environmental Protection Agency (EPA)
- the US Department of Agriculture (USDA);
- the United States Department of Defense (DOD);
- the State of Florida's Department of Environmental Protection; and Florida Fish and Wildlife Conservation Commission;
- the State of Alabama's Department of Conservation and Natural Resources and Geological Survey of Alabama;
- the State of Mississippi's Department of Environmental Quality;
- the State of Louisiana's Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries and Department of Natural Resources;
- the State of Texas' Parks and Wildlife Department, General Land Office, and Commission on Environmental Quality (collectively, the "Trustees").

In addition to acting as Trustees for this Incident under OPA, the States of Florida, Alabama, Mississippi, Louisiana, and Texas are also acting pursuant to their applicable state laws and authorities, including the Louisiana Oil Spill Prevention and Response Act of 1991, La. R.S. 30:2451 *et seq.*, and accompanying regulations, La. Admin. Code 43: 101 *et seq.*; the Texas Oil Spill Prevention and Response Act, Tex. Nat. Res. Code, Chapter 40, Section 376.011 *et seq.*, Fla. Statutes, and Section 403.161, Fla. Statutes; the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. §§ 49-17-1 through 19-17-43; and Alabama Code §§ 9-2-1 *et seq.*, and 9-4-1 *et seq.*

¹ In this Claim, the *Deepwater Horizon*/MC 252 Oil Spill is referred to as "Oil Spill" or "Incident" which may include, as applicable, all Incident(s) related to the events of the explosion, fire and subsequent discharges of oil and other substances from the rig and wellhead on the seabed into the Gulf of Mexico.

Funds previously received by the Department from BP and/or the U.S. Coast Guard's National Pollution Fund Center (NPFCC) have not been applied to the proposed activities in this Claim.

1.2. Responsible Party Information

The Responsible Parties (RPs) identified for this Incident thus far are BP; Transocean Holdings Inc. (Transocean); Triton Asset Leasing GmbH (Triton); Transocean Offshore Deepwater Drilling Inc. (Transocean Offshore); Transocean Deepwater Inc. (Transocean Deepwater); Anadarko Petroleum (Anadarko); Anadarko E&P Company LP (Anadarko E&P); and MOEX Offshore 2007 LLC (MOEX). Pursuant to 15 C.F.R. § 990.14(c), concurrent with the publication of the Notice to Conduct Restoration Planning, the Trustees invited the RPs identified above to participate in an NRDA. The Trustees have coordinated with BP, the only RP who accepted this invitation to actively participate in the NRDA process.

1.3. Determination of Jurisdiction

For reasons identified in the Notice of Intent to Conduct Restoration Planning for this Incident, the Trustees determined they have jurisdiction to pursue restoration under OPA. 75 Fed. Reg. 60800 (Oct. 1, 2010).

1.4. Time Limitations on Claims

This Claim is for funding of reasonably necessary early restoration planning procedures. The NRDA for this Incident is not complete.

1.5. Legal Action

On December 15, 2010, the United States filed its complaint against the RPs in the Eastern District of Louisiana (Civil Case no. 2:10-cv-04536). At this time, the trial schedule does not include natural resource damages quantification in the first three phases of litigation.

1.6. Claim Presentation

This Fourth Interim, Partial Claim for Early Restoration Planning Costs has been presented for a sum certain, in accordance with OPA to BP by letter dated November 7, 2014.

1.7. Overview of How DOI Estimated Restoration Planning Costs

The Department will support early restoration efforts through the end of 2015. Accordingly, this Claim is largely based on the amount of technical effort required to this end. Data management, scientific documentation, and legal review of plans, as well as environmental impact analyses, are included as part of this Claim. Also included in the cost

estimates is the level of effort expected for co-Trustee and RP coordination. As detailed in the following sections of this Claim, DOI is requesting support in this IPC for contractor costs for Early Restoration Planning. DOI staff efforts related to early restoration activities are also described below.

2. Early Restoration Planning

2.1. 2015 IPC Activity: Early Restoration Planning

The *Deepwater Horizon* NRDA Trustees will continue work in 2015 to finalize Early Restoration planning. The Trustees expect the next phase of projects, Phase IV, to exhaust the approximately \$300 million in early restoration funds remaining out of the original \$1 billion made available by the Framework Agreement. The Trustees expect that development of Phase IV projects will require the same extensive level of planning, evaluation, environmental compliance analysis, and public review as those included in Phase III. Depending on the success of negotiations with BP, the Trustees expect that most to all of the Phase IV projects will be in final development and final negotiations with BP by the end of 2015.

The Department will continue to chair the Trustee Council's Restoration Subcommittee and multiple departmental staff will participate on this Trustee subcommittee. Each Trustee has one or more representatives who participate on this subcommittee. Trustee representatives have expertise in biology, ecology, law, and/or economics, and will work together on the development, selection, and construction of offsets for the proposed Early Restoration projects. DOI staff will work together with the other Trustees on both Department-led and non-Department led projects and activities that support OPA-based activities for developing restoration scaling and injury offsets. Injury offsets must be incorporated into a draft restoration plan available for public review before both BP and the Trustees can stipulate to the offsets and proceed with project implementation. Department staff provides the leadership to bring projects up to both OPA and NEPA readiness and bring projects through the signing of project-specific stipulations.

The Trustees will have the ability to tier NEPA and OPA analyses and discussion from the Programmatic and Phase III Early Restoration Plan and Early Restoration Programmatic Environmental Impact Statement (Phase III ERP/PEIS) finalized in 2014. This may reduce the level of effort needed to produce early restoration plan(s) for anticipated Phase IV projects. As required under OPA, each Early Restoration plan will require public review and comment. The Department is thus anticipating leading additional Early Restoration public meetings across the Gulf States.

Completion of applicable environmental and regulatory compliance will also be required for Phase IV projects prior to stipulations. As the Department leads the development and coordination of Early Restoration planning efforts, agency staff will also lead the required NEPA and environmental compliance consultations. Consultations on environmental compliance regulations and statutes are a specific part of the NEPA analysis. These compliance consultations include those required under the Endangered Species Act, the Coastal Zone Management Act, and Section 106 of the National Historic Preservation Act. For each Phase IV project proposal, Department staff will be required to evaluate the project geographic footprint and generate reviews, determinations, and consultation letters. Department staff will require close coordination with NOAA staff for consultations governed by the Endangered Species Act and Marine Mammal Protection Act, as both agencies have shared resources protected by these acts.

In addition to the agency staff time needed for these activities, the Department requires technical support to continue its Early Restoration responsibilities under the Framework Agreement. Specifically, assistance is needed to identify the benefits of each Early Restoration project, including appropriate metrics (biological, physical, human recreational use) that will be used to describe the benefits generated by each project, the time period over which those benefits will be generated, the geographic scope of benefits, and other factors. These benefit measures will be used in negotiations with BP over the “offsets” (i.e., credits against natural resource damages) that will be provided by each project.

The Department also requires technical support to organize and assist in writing the tiered Early Restoration plan(s) for Phase IV projects. The document(s) will be written by a committee comprised of multiple representatives from each Trustee Council member. Contractor technical assistance is needed to provide writing facilitation, lead Trustee-staffed sub-groups through complex NEPA analysis, and edit the multi-authored Phase IV Early Restoration plan.

Relationship to Other Activities and Data

Under the Framework Agreement, the purpose of early restoration is to accelerate meaningful restoration for injured natural resources in the Gulf prior to completing the NRDA process. Early restoration projects are designed to ‘offset’ injuries to natural resources which are currently being measured and quantified under the myriad of assessment plans funded by either BP or the NPFC. Project development for Phase IV Early Restoration in 2015 is therefore directly connected to a number of pre-assessment and assessment study plans designed to elucidate the effects of the Oil Spill on birds, sea turtles, Department lands and facilities, and listed species. As part of its role in leading Early

Restoration activities, the Department is responsible for coordinating pre-stipulation project planning and project development activities across all five State and four Federal Trustees. This includes organizing and facilitating monthly meetings, and organizing conference calls and webinars among Trustee Council groups, committees, and subcommittees to discuss early restoration projects as necessary.

Deliverables Produced

The primary deliverable will be one or more publicly reviewed Phase IV Early Restoration plan(s) that will tier from the Programmatic EIS and Early Restoration Plan (ERP) finalized by the Trustees in 2014. This plan will be a compilation of multiple Trustees' efforts; however, Department staff and Department contractor support will lead the production of one or more tiered ERP(s) for the Phase IV projects in 2015. Under DOI leadership, this early restoration model has proven successful since the Framework Agreement was approved in April 2011. Through 2014, the Department has led the completion of three phases of Early Restoration and has already taken initial steps toward the development of a fourth phase that would include several more Early Restoration projects across the Gulf. The Department anticipates this last phase will conclude the Early Restoration project development and negotiation effort.

In 2015, Department staff and Department contractors will complete the following to support Phase IV of Early Restoration:

- Develop offsets for DOI Phase IV project and provide review and input to non-DOI Phase IV project offsets;
- Develop one or more Early Restoration plan(s) for Phase IV that will tier from the Programmatic EIS and ERP;
- Conduct a public comment period pursuant to OPA (33 U.S.C. § 2706(c)(5)) and NEPA (40 C.F.R. § 1506.6) requirements to seek public review and comment on the tiered Phase IV Early Restoration plan(s).
- Conduct 10 or more public meetings throughout the Gulf Region to seek public comment;
- Collect, organize, and analyze all comments received (at the public meetings, by mail or email, by or other mechanisms) using an online database;
- Prepare responses to the public comments received;
- Prepare a final tiered Phase IV ERP(s) and appropriate NEPA analyses, incorporating responses to the comments received on the draft document(s);
- Prepare draft Finding of No Significant Impact decisions to document decisions made by the State and Federal Natural Resource Trustees for the Spill;

- Incorporate comments from the Trustees and prepare a final decision document(s).

Administrative Record

The DOI team comprised of Department staff and contractor support will continue to respond to requests for documents to complete the Trustees' Administrative Record. The costs associated with the DOI efforts of gathering and providing these Early Restoration planning documents for the Administrative Record purposes is captured here. The costs of processing these (and other) documents and the overall development of the Administrative Record will be captured under DOI's Fifth IPC.

Principal Investigators

The DOI staff involved in the Early Restoration planning effort include James Haas, Bruce Peacock, Lynne Koontz, Amy Mathis, Mark VanMouwerik, Alyssa Dausman, Michelle Meyers, Gregg Steyer, James Chapman, Colette Charbonneau, Benjamin Frater, Erin Chandler, Andrew Laughland, Ashley Mills, Robin Renn, Brian Spears, Charles Wood, Dan Audet, Kevin Reynolds, Cynthia Dohner, Debora McClain, Holly Blalock-Herod, John Carlucci, John Rudolph, Holly Deal, Craig Conzelmann, John Barras, and numerous administrative support staff. Key contractor staff associated with the Early Restoration planning effort include Andrew Schwarz, Michael Donlan, Meredith Amend, Lena Flannery, Mindy Joiner, and Leslie Genova (all IEC).

RP Involvement

BP is intimately involved in the Early Restoration process. BP is involved in the negotiations of the offsets and the budgets of the proposed projects for early restoration. The trustees are responsible for proposing and designing projects. BP can also, per the Framework Agreement, propose Early Restoration projects for the Trustees to consider. Once the Trustees identify projects and determine offsets and budgets, BP offers comments to the Early Restoration plans and associated NEPA documentation through the public comment process. DOI includes responses to these comments in the final document. DOI attorneys and DOI staff coordinate language for the stipulation agreements with BP for the transfer of funds as well as offsets.

Level of Effort:

A total of \$4,872,270 is projected for the Early Restoration planning activities described above which includes \$1,157,000 for contractor support and \$3,715,270 for DOI staff activities, as well as \$730,841 in contingency costs.

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These funds support early restoration planning activities up to the point of project stipulations and no further. No project implementation activities/costs are included in this Claim.